



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. David Kelly

FEB 26 2019

Roseville, CA 95661

RE: MUR 7408  
Jessica Morse for Congress  
and Stephen Smallcombe in his  
official capacity as treasurer

Dear Mr. Kelly:

On February 20, 2019, the Federal Election Commission reviewed the allegations in your complaint dated June 7, 2018, and found that on the basis of the information provided in your complaint and information provided by the respondent, that there is no reason to believe that Jessica Morse for Congress and Stephen Smallcombe in his official capacity as treasurer, violated 52 U.S.C. § 30104(b)(4) by failing to report expenditures and disbursements associated with the committee's direct mail efforts. Accordingly, on February 20, 2019, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analyses, which more fully explains the Commission's findings are enclosed.

The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 52 U.S.C. § 30109(a)(8). If you have any questions, please contact Camilla Jackson Jones, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Lisa J. Stevenson  
Acting General Counsel

  
BY: Lynn Y. Tran  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**  
2 **FACTUAL AND LEGAL ANALYSIS**  
3

4 **RESPONDENTS:** Jessica Morse for Congress and  
5 Stephen Smallcombe in his official capacity  
6 as treasurer  
7

**MUR: 7408**

8 **I. INTRODUCTION**

9 The Complaint alleges that Jessica Morse for Congress and Stephen Smallcombe in his  
10 official capacity as treasurer (the "Committee"), the principal campaign committee for Jessica  
11 Morse, a candidate for the U.S. House of Representatives in California's Fourth District, violated  
12 provisions of the Federal Election Campaign Act of 1971, as amended, (the "Act"). Specifically,  
13 the Complaint alleges that the Committee violated 52 U.S.C. § 30104(b)(4) by failing to report  
14 more than \$100,000 in disbursements for mailers related to the Primary election.<sup>1</sup>

15 Based on the available information, the Commission finds no reason to believe that  
16 Jessica Morse for Congress and Stephen Smallcombe in his official capacity as treasurer,  
17 violated 52 U.S.C. § 30104(b)(4) by failing to report expenditures and disbursements associated  
18 with the Committee's direct mail efforts.

19 **II. FACTUAL AND LEGAL ANALYSIS**

20 **A. Background**

21 Jessica Morse was a Democratic candidate for the House of Representatives in  
22 California's Fourth Congressional District.<sup>2</sup> Morse and her authorized campaign committee filed

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<sup>1</sup> Compl. at 1-2 (Jun. 7, 2018). The Committee did not submit a response to the Complaint.

<sup>2</sup> Morse and incumbent Representative Tom McClintock were the top two vote-getters in the Primary Election. She lost the general election to McClintock.

1 an original Statement of Candidacy and Statement of Organization on July 14, 2017.<sup>3</sup> The  
2 relevant primary election was held on June 5, 2018.

3 Complainants are residents of California's Fourth Congressional District who allege that  
4 over a six-week period, they received three mailers (attached to the complaint), each of which  
5 contained the disclaimer "Paid for by Jessica Morse for Congress."<sup>4</sup> The Complaint alleges that  
6 the Committee sent these mailers to tens of thousands of voters throughout the Fourth District  
7 during these six weeks, and that the Committee failed to report expenditures for these mailers.<sup>5</sup>  
8 In support, the Complaint relies on the Committee's 2018 April Quarterly Report, in which the  
9 Committee discloses disbursements totaling \$402.19 for postage and \$3,375.24 for printing  
10 during that reporting period (January 1 through March 31, 2018)<sup>6</sup> and its Pre-Primary Report, in  
11 which the Committee disclosed disbursements totaling \$880.39 for postage and \$4,105.08 for  
12 printing during that reporting period (April 1, 2018 through May 16, 2018).<sup>7</sup> In these reports,  
13 the Committee does not disclose any loans, debts, and obligations, or any in-kind contributions  
14 for postage or printing services related to its direct mail program.

<sup>3</sup> The Committee filed several Amended Statements of Organization, which reflected changes in its address, treasurer and affiliated committees, with the most recent amendment being filed on October 16, 2018. See Jessica Morse for Congress Amended Statement of Organization (Oct. 16, 2018), <http://docquery.fec.gov/pdf/548/201810169125549548/201810169125549548.pdf>.

<sup>4</sup> See Compl., Exh. A, B, and C. Complainants David Kelly and Gary Gutawsky were contributors to Morse's closest competitor, the Bateson Campaign. See Bateson Campaign 2017 Year-End (Jan. 31, 2018), 2018 April Quarterly (Apr. 15, 2018), Pre-Primary (May 24, 2018), and July Quarterly (Jul. 15, 2018) Reports.

<sup>5</sup> Compl. at 2.

<sup>6</sup> See 2018 April Quarterly Report (Apr. 15, 2018), <http://docquery.fec.gov/pdf/173/201804159108210173/201804159108210173.pdf>.

<sup>7</sup> See 2018 Pre-Primary Report (May 24, 2018), <http://docquery.fec.gov/pdf/202/201805249113327202/201805249113327202.pdf>.

1 Based on the size and scope of the Committee's direct mail program, the Complaint  
2 surmises there is reason to believe that the Committee underreported its spending by \$100,000 or  
3 more. The Complaint compares the Committee's spending to that of one of Morse's primary  
4 opponents, Regina Bateson. Bateson was another Democratic competitor in the primary, and her  
5 authorized committee, Bateson for Congress and Rita Copeland in her official capacity as  
6 treasurer (the "Bateson Campaign"), disclosed in its Pre-Primary Report spending \$161,200.51  
7 for direct mail production for the period April 1, 2018 - May 16, 2018.<sup>8</sup> By contrast, the Morse  
8 Committee reported spending only \$8,762.90 from January 1, 2018 through May 16, 2018 for  
9 printing and mailing.<sup>9</sup>

10 According to the Commission's records, the Morse Committee reported the following  
11 disbursements associated with printing and direct mail during the 2018 election cycle:

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<sup>8</sup> See Bateson Campaign 2018 Pre-Primary Report (May 24, 2018), <http://docquery.fec.gov/pdf/936/201805249113333936/201805249113333936.pdf>; Amended Pre-Primary Report (Aug. 9, 2018), <http://docquery.fec.gov/pdf/696/201808099119384696/201808099119384696.pdf>. Bateson filed a Termination Report on August 9, 2018, <http://docquery.fec.gov/pdf/384/201808099119385384/201808099119385384.pdf>, and received its Termination Approval from the Commission on August 23, 2018, <http://docquery.fec.gov/pdf/849/201808230300018849/201808230300018849.pdf>.

<sup>9</sup> See 2018 April Quarterly Report (Apr. 15, 2018).

Payee	Purpose	Dates/Amount spent/Report	Total Amount
Time Printing	printing	2/21/18 – \$2,904.35 (Apr. Qtr.) 3/19/18 – \$162.38 (Apr. Qtr.) 3/23/18 – \$308.51 (Apr. Qtr.) 4/28/18 – \$535.84 (Pre-Prim.) 5/11/18 – \$308.51 (Pre-Prim.) 6/4/18 – \$433.00 (Jul. Qtr.)	\$4,961.10
Print for Progress	printing	4/28/18 – \$2,952.22 (Pre-Prim.) 5/25/18 – \$8,117 (Jul. Qtr.)	\$11,069.22
Gibson Printing	printing	5/21/18 – \$422.72 (Jul. Qtr.)	\$422.72
USPS	postage	4/13/18 – \$701.75 (Pre-Prim.) 6/21/18 – \$49.10 (Jul. Qtr.) 6/26/18 – \$300.00 (Jul. Qtr.)	\$1,092.10
SKD Knickerbocker	direct mail direct mail direct mail/tv ads	5/17/18 – \$29,147.04 (Jul. Qtr.) 5/17/18 – \$10,488.48 (Jul. Qtr.) 5/25/18 – \$200,278.71 (Jul. Qtr.)	\$239,914.23
		<b>Total</b>	<b>\$257,459.37</b>

1 In comparison, the Bateson Campaign reported total disbursements of \$188,761.35 for  
2 “printing,” “direct mail production,” and “postage” during the 2018 cycle.<sup>10</sup>

### 3 B. Legal Analysis

4 The Act requires each treasurer of a political committee to file reports of receipts and  
5 disbursements, including contributions and expenditures with the Commission.<sup>11</sup> These reports  
6 must include, *inter alia*, the total amount of all receipts and disbursements, including the  
7 appropriate itemization, where required.<sup>12</sup> An “expenditure” is defined as “any purchase,  
8 payment, distribution, loan, advance, deposit, or gift of money or anything of value made by any  
9 person for the purpose of influencing any election for Federal office.”<sup>13</sup>

<sup>10</sup> See Bateson Campaign 2018 April Quarterly, Pre-Primary and July Quarterly Reports.

<sup>11</sup> 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

<sup>12</sup> See 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a), (b).

<sup>13</sup> 52 U.S.C. § 30101(9)(A)(i); 11 C.F.R. § 100.111.

1 The Complaint, relying on differences between the spending of the Morse and Bateson  
2 Committees, alleges that the Committee underreported disbursements for mailers sent before the  
3 primary election. The Complaint, however, was filed before the Committee reported the bulk of  
4 its disbursements for direct mail.<sup>14</sup> The Committee ultimately reported spending over \$250,000  
5 for direct mail and television ads in its July Quarterly Report, which was filed on July 15, 2018,  
6 approximately a month after the Complaint.<sup>15</sup>

7 Complainants do not give a precise date on which they received the Morse mailers but  
8 allege it was during the six weeks before the Primary Election.<sup>16</sup> According to the Committee's  
9 reports, it made disbursements apparently significant enough to have been related to the mailers  
10 on April 28th, May 17th, and May 25th, which coincide with the time period during which  
11 Complainants allege they received the mailers.<sup>17</sup>

12 The available information is insufficient to support a reasonable inference that the  
13 Committee underreported its direct mail disbursements. First, the Complaint was filed before the  
14 Committee filed its 2018 July Quarterly Report, which disclosed significant spending on voter  
15 mail and TV ads. Second, the Committee's reporting appears to comply with the Act and  
16 Commission regulations, and the Commission has not issued the Committee any Requests for  
17 Additional Information regarding any of its reports. While most of the Committee's

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<sup>14</sup> The Complaint was notarized on March 25, 2018 and filed with the Commission on June 7, 2018, two days after the Primary election. It is worth noting that March 25, 2018 was the same date the Committee made its largest disbursements for direct mail production to its primary vendor, SKD Knickerbocker. See Committee 2018 July Quarterly Report.

<sup>15</sup> See 2018 July Quarterly Report (July 15, 2018), <http://docquery.fec.gov/pdf/801/201807159115677801/201807159115677801.pdf>.

<sup>16</sup> Compl. at 2.

<sup>17</sup> These disbursements were reported in the Committee's Pre-Primary Report, which covered April 1-May 15, 2018, and July Quarterly Report, which covered May 16-June 30, 2018.

1 expenditures for direct mail and TV ads were not reported until after the Primary Election, the  
2 Committee's disclosures complied with the reporting schedule for authorized committees that  
3 file quarterly reports.<sup>18</sup> Third, the timing of the disbursements alone is not sufficient to support  
4 the conclusion that the Committee underreported its expenditures, absent information that the  
5 disbursements occurred on dates other than the ones the Committee reported, or the Committee  
6 did not report all of its disbursements.<sup>19</sup> We have no such information. Finally, the Complaint's  
7 assumption that a comparison of the timing of the Morse and Bateson disbursements proves the  
8 Committee underreported is speculative.

9 Because there is insufficient information to support the allegation that the Committee did  
10 not timely report disbursements for its direct mail costs, the Commission finds no reason to  
11 believe Jessica Morse for Congress and Stephen Smallcombe in his official capacity as treasurer,  
12 violated 52 U.S.C. § 30104(b)(4) by failing to report expenditures and disbursements associated  
13 with the Committee's direct mail efforts.

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<sup>18</sup> See FEC 2018 Reporting Deadlines, [https://transition.fec.gov/info/report\\_dates\\_2018.shtml#quarterly](https://transition.fec.gov/info/report_dates_2018.shtml#quarterly).

<sup>19</sup> Compare MUR 6903 (Lawrence) (finding RTB and conciliating with a committee that failed to file several quarterly reports and failed to disclose all of its receipts, disbursements and debts in its reports); MUR 6966 (Democratic Party of Wisconsin) (finding RTB and conciliating with committee after an audit determined that the committee had misstated and underreported disbursements).